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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THOMAS T. BACHMANN, Appellant, v. BROADWAY FEDERAL BANK, F.S.B., Respondent.	B236334 (Los Angeles County Super. Ct. No. BC398403)

APPEAL from a judgment of the Superior Court of Los Angeles County. Luis A. Lavin, Judge. Reversed and remanded.

Enenstein & Ribakoff, Teri T. Pham and Robert A. Rabbat; Thomas T. Bachmann, in pro. per., for Appellant.

K&L Gates, Paul W. Sweeney Jr., Robert E. Feyder and Matthew B. O'Hanlon for Respondent.

Appellant Thomas T. Bachmann ("Bachmann") appeals from the judgment entered upon an order denying his motion to set aside the default pursuant to Code of Civil Procedure section 473.5. Bachmann asserts that he is entitled to relief from the default because he did not have "actual notice" of the action in time to defend against it before his default was taken by respondent Broadway Federal Bank ("Broadway"). In addition, Bachmann claims that the trial court should have granted his motion to quash for improper service of the summons because: (1) the lower court erred in exercising personal jurisdiction over him; and (2) even if personal jurisdiction is established, Broadway did not provide proper service of the summons and complaint. As we shall explain, Bachmann's claim with respect to his motion to set aside the default has merit. The only relevant evidence in the record on the issue of "actual notice" shows that Bachmann did not have actual notice of the action until one day before Broadway filed its request for entry of default and that Bachmann timely moved to set it aside. This notwithstanding, the lower court did not err in exercising personal jurisdiction over Bachmann or concluding that Broadway had properly served Bachmann with the summons and complaint, and thus properly denied Bachmann's motion to quash. Accordingly, we reverse and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

I. Parties

Broadway is a "community bank" dealing with residential and commercial real estate loans and deposit products since 1947. Broadway usually deals with low to moderate income individuals living in South Los Angeles, and is not normally approached by out-of-state residents about making loans.

Bachmann is a real estate developer and dual citizen of Canada and Switzerland, residing in Zurich, Switzerland. At the time of the Cross-Complaint, Bachmann was an officer of Bachmann Springs Holdings, LLC ("BSH"), the developer of a real estate

project in Arizona.[1] At the time of the business dealings between the parties, Bachmann provided Broadway with contact information that indicated he resided in Encino, California.

II. Share loan negotiations between Broadway and Bachmann

In December 2007, Broadway's Vice President and Director of Wealth Management, Wayne Standback ("Standback") met with a loan broker, Alan Roberson ("Roberson"), to discuss a loan arrangement. Roberson and his business partner, Robert Estareja ("Estareja"), were acting on Bachmann's (as well as BSH's) behalf in connection with BSH's real estate project, "Bachmann Springs." Bachmann wanted to deposit money at Broadway to be used as collateral for a loan from Broadway that would be used toward Bachmann Springs.

A. Terms of the Share Loan

In January 2008, Standback and Roberson discussed a share loan program that would allow BSH to borrow 90 percent of the amount Bachmann was to deposit at Broadway. Standback communicated to Bachmann the terms of the proposed share loan ("Share Loan"). Bachmann then sent Standback written authorization for BSH to establish an escrow account with Broadway to borrow up to 90 percent of his deposits there. Roberson then sent Standback an e-mail making Estareja the "point person" for Bachmann regarding the deposit. On or about January 18, 2008, Bachmann submitted to Standback completed forms establishing his new account with Broadway, calling the account "Bachmann/Canyon Escrow." Following this, Broadway opened an account for BSH.

On or about January 22, 2008, a meeting regarding the Share Loan took place where Estareja, Roberson, and Standback personally attended while Bachmann and the escrow agent for Bachmann Springs, Daniel D. Holliday III, Attorney at Law, LLC

[1] At the beginning of dealings between Broadway and Bachmann, the entity in question was named "Bachmann Springs Holdings, LLC." During the course of those dealings, "Bachmann Springs Holdings, LLC" was renamed "Greenlife Springs Holdings, LLC." For simplicity, the entity in question will be referred to as "BSH" forward.

("Escrow Agent") participated via telephone conference. All parties agreed that the Share Loan would be secured by Bachmann's deposit at Broadway.

B. Discussion of lien priority with BSH Escrow Agent Holliday

Between December 2007 and February 2008, Broadway's representatives had several discussions with Holliday regarding the proposed Share Loan and use of deposited funds. Holliday notified Broadway that under the terms of the purchase agreements for the lots, in the event of a developer's default (in this case, BSH's default), the "[b]uyer's rights and preferences… will apply and be superior to any lender remedies for default."

C. Bachmann's Contact With California And The United States

In communications between Bachmann and Broadway officials, Bachmann represented himself as a Canadian citizen who resided in Encino, California. He provided a home telephone number with a San Fernando Valley area code. On or about January 18, 2008, Bachmann sent Standback two forms relating to the Share Loan Agreement that listed his home address as 3780 Caribeth Drive, Encino, California 91436. Additionally, during the execution of the Account Agreement, which related to the opening of the BSH account at Broadway, Bachmann certified under penalty of perjury that he was a "U.S. person (including a U.S. resident alien)."

D. Share Loan Agreement

On or about February 1, 2008, $2,498,841.41 was wired to Broadway (the "Deposit"). Bachmann also requested that Standback add Estareja as an authorized signatory on the account. On February 6, 2008, Estareja, representing BSH, signed the share loan note ("Note") in Standback's presence. The Note pledged the Deposit as senior collateral for the Share Loan. The next day, February 7, 2008, the Share Loan sum of $2,248,498.27 was deposited into the Bachmann account.

III. Broadway refuses to approve additional loans to Bachmann

Following the establishment of the share loan arrangement, BSH attempted to do further business with Broadway. Bachmann was attempting to acquire additional loans from Broadway for BSH. Broadway explained it would need additional collateral to

provide additional loans, but upon some inquiry, Broadway ascertained that Bachmann could provide no more than life "settlement" (i.e. insurance) policies.

As a result of Bachmann's inability to acquire more loans from Broadway, on or about April 8, 2008, Estareja asked Broadway to transfer the Deposit to another bank. On April 28, 2008, Bachmann wrote to Broadway threatening to withdraw the Deposit if Broadway refused to resolve an "unsecured loan issue."

On August 7, 2008, Bachmann met in person with Broadway's CEO, Paul Hudson, at Broadway's headquarters in Los Angeles, to discuss the loans he had requested. Broadway subsequently decided not to make further loans to BSH.

IV. Escrow Agent Holliday files suit against Broadway

On September 18, 2008, Holliday filed suit against Broadway, and filed a Second Amended Complaint on March 4, 2009. He demanded that Broadway return initial deposit money to the third party buyers pursuant to the purchase agreements. Holliday alleged causes of action against Broadway for declaratory relief, breach of contract, conversion, constructive trust, and injunctive relief arising out of Broadway's refusal to release certain funds to Holliday that Broadway contended served as security for the Share Loan.

V. BSH defaults on Share Loan

On February 6, 2009, the Share Loan was due. BSH failed to pay it on maturity. BSH subsequently took the position that the Share Loan was actually an unsecured loan to BSH.

VI. Broadway files Cross-Complaint against Bachmann

On or about April 17, 2009, Broadway filed a cross-complaint alleging causes of action against Bachmann and others for fraud, negligent misrepresentation, conspiracy, and implied equitable indemnity. Broadway alleged that, prior to Broadway's making the Share Loan, Bachmann falsely represented to Broadway that the Share Loan would be secured by the Deposit and would be the senior lien thereon. Broadway alleged that Bachmann knew that the Escrow Agent (rather than Broadway) would have first position on the lien on the Deposit despite language to the contrary on the Share Loan Note.

Finally, Broadway alleged that Bachmann intentionally misrepresented to Broadway that the Share Loan was authorized and would be secured first position by the Deposit in order to induce Broadway to make the Share Loan to BSH.

A. Service of Cross-Complaint

On or about April 29, 2009, Broadway's attorney service attempted to serve the cross-complaint on Bachmann at the Bachmann residence in Encino ("Residence").[2] On or about May 11, 2009, after making six attempts to personally serve Bachmann at the Residence, counsel for Broadway's attorney service served the cross-complaint on Bachmann by substitute service at the Residence by doing the following: (1) leaving the documents in the presence of a competent, over 18-year-old member of Bachmann's household; and (2) sending copies of the documents with prepaid postage by first class mail to Bachmann's attention at the Residence.

B. Broadway's Contact With Bachmann's Attorney

On or about July 3, 2009, Broadway's counsel received an e-mail from Eric Rowen ("Rowen"). In this e-mail, he identified himself as representing BSH in certain matters.

On or about July 6, 2009, Broadway's counsel spoke to Rowen on the telephone about service of Broadway's cross-complaint on BSH and Bachmann. During this conversation, Rowen told Broadway's counsel the following: (1) he did not believe Bachmann was amenable to services of process in California; (2) he was not authorized to accept service on Bachmann's behalf, nor was he permitted to agree to any extensions; (3) Bachmann had not been in the United States for about 10 months; and (4) the Residence where Broadway had served Bachmann was the separate property of Bachmann's wife. Broadway's counsel responded that Broadway believed it had properly served Bachmann and that unless Broadway received evidence that Bachmann

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[2] A female at the residence informed the process server that Bachmann was out of the country and that she was unsure when he would return.

was not amenable to service of process in California and/or unless Bachmann filed a response to the cross-complaint on or before July 21, 2009, Broadway intended to request the entry of Bachmann's default.

C. Bachmann Failed To Respond Timely To Broadway's Cross-Complaint And Broadway Requests Entry Of Bachmann's Default

Because Broadway served Bachmann with the cross-complaint via substitute service on May 11, 2009, the deadline for a response was initially June 22, 2009. However, Broadway allowed for an extension to July 21, 2009.[3] Bachmann failed to respond by July 21, 2009. Subsequently, on July 22, 2009, Broadway requested entry of Bachmann's default, which was entered on the same day.

VII. Bachmann's initial motion to quash is denied

On July 22, 2009, the same day the default was entered, Bachmann filed a motion to quash service of the cross-complaint on the grounds that (1) the court lacked personal jurisdiction over him, and (2) service of the cross-complaint was defective. The motion to quash ("Initial Motion to Quash") was ultimately denied on September 28, 2009, on the grounds that: (1) a default had been entered against Bachmann prior to the filing of the Initial Motion to Quash; and (2) the Initial Motion to Quash was not timely filed within 30 days of service of the summons, as required by Code of Civil Procedure section 418.10, subdivision (a).

VIII. Bachmann's subsequent motions to quash service and set aside default are denied

On October 20, 2009, Bachmann filed: (1) motion to quash service of the cross-complaint ("Second Motion to Quash"); and (2) motion to set aside the default entered against him pursuant to Code of Civil Procedure section 473.5 ("473.5 Motion").

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[3] The record does not specifically indicate how this extension of time to respond came about, however it appears that Broadway permitted the extension following the conversation with Rowen due to the difficulty conveying notice of service to Bachmann.

On January 21, 2010, the court denied the Code of Civil Procedure 473.5 motion, finding that Bachmann failed to satisfy his burden to show lack of "notice of the lawsuit until after the default was filed." The court also denied the Second Motion to Quash, finding that substitute service was proper based on the following: (1) Bachmann admitted he lived at the Residence in 2008; (2) Bachmann informed Broadway in writing (on the Share Loan application) that he resided at the Residence; and (3) there was no evidence other than Bachmann's declaration that he no longer resided at the Residence.[4]

IX. Broadway obtains judgment against Bachmann and Bachmann appeals

On July 25, 2010, the court held an evidentiary hearing to prove up judgments against Bachmann, BSH, Estareja, and Roberson. On July 26, 2011, the trial court entered an amended judgment in Broadway's favor. Broadway obtained a final judgment against Bachmann and others on its fraud claims for the full amount of the Share Loan, $2,352,000.79, plus additional accrued interest in the amount of $244,123.92, for a total of $2,596,130.71. Bachmann timely filed this appeal.

DISCUSSION

I. The Trial court erred when it denied Bachmann's motion for relief from the entry of default.

Under Code of Civil Procedure section 473.5, a party may file a motion to set aside the default or default judgment and for leave to defend the action given if: (1) the moving party did not receive actual notice in time to appear and defend the action, through no inexcusable fault of his own, and had not made a general appearance; (2) a default or default judgment has been entered against him by the court; (3) he acted with reasonable diligence in serving and filing the notice of motion to set aside default or default judgment; and (4) he has a meritorious defense. (*Goya v. P.E.R.U. Enterprises* (1978) 87 Cal.App.3d 886, 890-91l; Code Civ. Proc. § 473.5.) Section 473.5 is a

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[4] On March 2, 2010, Bachmann filed a petition for a writ of mandate regarding the trial court's denial of his Second Motion to Quash and 473.5 Motion. This court denied the petition on March 3, 2010.

remedial statute It is liberally construed to allow cases to be disposed on the merits, and to give a party claiming in good faith to have a substantial defense an opportunity to present it. (*Thompson v. Sutton* (1942) 50 Cal.App.2d 272, 276.)

The dispositive issues here are (1) whether Bachmann lacked actual notice of the action in time to defend it through no fault of his own and (2) whether Bachmann set forth a meritorious defense.

A. Actual Notice

"Actual notice" in this context is defined as "genuine knowledge of the party litigant." (*Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1077.) Actual notice does not contemplate notice imputed to a party from his attorney's actual notice or from constructive notice which might arise as a matter of law from service of complaint. (*Rosenthal v. Garner* (1983)142 Cal.App.3d 891,895.)

Here in support of his motion to set aside the default, Bachmann submitted his declaration in which he stated that he had no idea that he would be a party to any action in the United States, and that he "had no reason to suspect that [he] would be named as a defendant in any such action at the time [he] left the country, and [he] never had any actual knowledge of the existence of this Action until or on about July 21, 2009."

For its part, Broadway did not present evidence or counter affidavits to directly contradict Bachmann's statement in his declaration that he lacked actual notice. Instead, Broadway argued that Bachmann had adequate notice of the action because it had properly served him with the summons and complaint via substitute service.

Broadway's service argument is beside the point; it does not undermine Bachmann's argument that he lacked actual notice of the action in time to defend himself as contemplated under section 473.5. The fact that a complaint has been served consistent with requirements for proper service under the Code of Civil Procedure does not, standing alone, prove "actual notice" in the context of 473.5. (*Goya v. P.E.R.U. Enterprises, supra,* 87 Cal.App.3d at pp. 891-892 [finding no actual notice under section 473.5 notwithstanding the fact that certain parties were served with the summons and complaint via substitute service].) Thus the only relevant evidence before the trial court

at the time it ruled on the motion seeking relief from default was Bachmann's testimony that he was unaware of the action prior to July 21, 2009.

In our view, Bachmann's evidence satisfies his burden on this element of section 473.5. The trial court, however, apparently rejected Bachmann's testimony on actual notice. Although we generally defer to the lower court's discretion in resolving such matters, the record, including the transcript from the hearing on the motion, is silent on the issue. While the court found statements in Bachmann's declaration concerning substitute service "self-serving," the court did not expressly reject Bachmann's factual contention that he lacked actual notice of the action prior to July 21, 2009. In light of the record before us and in absence of any sound rationale for rejecting Bachmann's testimony on this issue, we cannot defer to the lower court's resolution.

Moreover, at the hearing on the motion, it appears that the lower court misstated the legal standard on this issue, describing Bachmann's burden under section 473.5 as: "I don't think he has met his burden that he did not have notice of the lawsuit until after the default was entered." This is not the actual notice standard under section 473.5. The proper test is whether Bachmann had actual notice of the lawsuit in time to defend the action and default or default judgment has been entered against him. (See Code Civ. Proc., § 473.5, subd. (a) ["When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action.") Consequently, to obtain relief under section 473.5(a), Bachmann was not required to show that he did not receive actual notice of the action until *after* the default was entered. Instead, the application of section 473.5 depends on whether he had time to respond to the action prior to the entry of default. In other words Bachmann can obtain relief under section 473.5 even if he learned of the action before entry of default so long as he demonstrates that he did not have time to defend the action.

Likewise, Bachmann provided some evidence that he did not cause his lack of actual notice by his or her avoidance of service or inexcusable neglect. (Code Civ. Proc.,

§ 473.5, subd. (b).) In his declaration Bachmann stated: "my lack of actual notice of this Action was not due to avoidance or inexcusable neglect on my part. I left the country long before the commencement of this Action for perfectly legitimate reasons." Though these statements are conclusory, Broadway did not counter them. Instead the record shows that the default was requested by Broadway and entered on July 22, 2009, the day after Bachmann's time to respond to the cross-complaint had expired. There is nothing else in the record to suggest that Bachmann avoided service or was neglectful in responding to the action. In fact, the evidence indicates that Bachmann filed his responsive pleading (i.e., his first motion to quash) at his first opportunity--the day after he received actual notice of the action.

B. Meritorious Defense[5]

Pursuant to California Code of Civil Procedure section 473.5, in addition to showing he was not actually served, a party challenging default must show that he has a meritorious defense to the action. (Code Civ. Proc., § 473.5.) Although the lower court did not address this aspect of section 473.5, in our view Bachmann satisfied his burden to show a meritorious defense.

Here Bachmann presented his "defense" to the action in his declaration (and in the motion to quash) asserting that he was not "personally" liable for the actions of Bachmann Springs Holdings, LLC in relation to the loan obtained from Broadway. As this court noted in *Goya*, the meritorious defense element is satisfied by a denial of liability—the moving party is not required to show a different result will be reached if the cause is tried on the merits. (*Goya v. P.E.R.U. Enterprises*, supra, 87 Cal.App.3d at p. 893.)

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5 Before this court, Bachmann relies upon Code of Civil Procedure section 473, subdivision (d) to dispose of the meritorious defense requirement. This, however, is not permissible. Prior to this appeal, Bachmann had not relied upon this section as a basis for relief. As such, he may not rely on it as a new basis for relief on appeal. (*Ernst v. Searle* (1933) 218 Cal. 233, 240-241.)

In view of the foregoing, and in light of the remedial purpose of section 473.5, reflecting the policy favoring trials on their merits rather than snap defaults, we conclude that the lower court erred in denying Bachmann's motion to set aside the default.

II. The Trial Court Properly Denied the Motion to Quash[6]

Bachmann claims that the trial court should not only have granted relief from default, it should also have granted his motion to quash. Bachmann based his motion to quash on a claim that the court lacked personal jurisdiction over him and that service of process was defective. As we shall explain the court properly rejected this motion.

A. Standard of Review

The standard of review we apply to an order granting or denying a motion to quash depends on whether in deciding the motion, the trial court resolved any conflicts in the evidence. If there was no conflict in the evidence presented below, the determinations of whether a defendant's contacts with California are sufficient to justify the exercise of personal jurisdiction in this state or whether service of the summons was proper are questions of law that we review de novo. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.) If, however, there is a conflict in the evidence underlying those determinations, we review the trial court's express or implied

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[6] Once the lower court denied the motion for relief from default, Bachmann's motion to quash became moot. (*Christersen v. French* (1919) 180 Cal. 523, 525 ["A defendant against whom a default is entered is out of court and is not entitled to take any further steps in the cause affecting plaintiff's right of action"]; *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385-86 [The defendant may not file pleadings or move for a new trial or move to quash "until such default is set aside in a proper proceeding"].) This notwithstanding, the trial court decided the merits of the motion to quash, denying it. Given our conclusion on the motion for relief from default, this matter must be remanded to the lower court for further proceedings, including affording Bachmann an opportunity to respond to Broadway's cross-complaint. In light of this procedural posture, we are not required to reach the merits of the order denying the motion to quash. However, because the trial court considered the motion and the parties have fully addressed the merits of issues presented in the motion in their appellate briefs, and because we anticipate that Bachmann may renew his motion to quash in the trial court, we have decided to consider the merits of Bachmann's motion.

factual findings under the substantial evidence standard. (See *Von's Companies, Inc. v. Seabest Foods, Inc*. (1996) 14 Cal.4th 434, 449.) In addition, to the degree there might be any conflicts in the evidence, we must resolve those conflicts in favor of the trial court's judgment. (See *ibid.*[conflicts in evidence on motion to quash service are drawn in favor of the trial's court's decision applying a substantial evidence standard]; *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 597–598 [drawing all legitimate and reasonable inferences to uphold the judgment in review of set aside motion].)

B. Personal Jurisdiction

Under Code of Civil Procedure section 410.10, a California court "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) "A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice." (*Vons Companies, Inc. v. Sea best Foods, Inc., supra,* 14 Cal.4th at p. 444.)

Personal jurisdiction may be either general or specific. "A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are substantial . . . continuous and systematic." (*Vons Companies, Inc. v. Seabest Foods, Inc., supra*, 14 Cal.4th at p. 445, emphasis and internal quotations omitted.) Such a defendant "may be subject to the specific jurisdiction of the forum . . . if the defendant has purposefully availed himself . . . of forum benefits, and the controversy is related to or arises out of a defendant's contacts with the forum [and] the assertion of personal jurisdiction would comport with fair play and substantial justice." (*Id.* at pp. 446-447, emphasis and internal quotations omitted.)

A plaintiff opposing a motion to quash service of process for lack of personal jurisdiction has the initial burden to prove, by a preponderance of the evidence, facts establishing purposeful availment and a substantial connection between the defendant's forum contacts and the plaintiff's claim. (*Snowney,* supra, 35 Cal.4th at p. 1062; *DVI, Inc.*

v. Superior Court (2002) 104 Cal.App.4th 1080, 1090–1091.) If the plaintiff satisfies that burden, the burden shifts to the defendant to show that the exercise of jurisdiction would be unreasonable. (*Snowney,* supra, at p. 1062; *Vons,* supra, 14 Cal.4th at p. 449.)

As we shall explain, we conclude that the trial court properly concluded that it had specific personal jurisdiction over Bachmann.

1. Bachmann purposefully availed himself of forum benefits.

The purposeful availment inquiry focuses on the defendant's intent. This prong is only satisfied when the defendant purposefully and voluntarily directs his or her activities toward the forum so that the defendant should expect, by virtue of the benefit he or she receives, to be subject to the court's jurisdiction based on the contacts with the forum. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269.) Thus, purposeful availment occurs where a nonresident defendant "'purposefully direct[s]' [its] activities at residents of the forum," "purposefully derive[s] benefit" from its activities in the forum, "create[s] a 'substantial connection' with the forum," "deliberately has engaged in significant activities within the forum," or "has created 'continuing obligations' between [itself] and residents of the forum." (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 472-476). By limiting the scope of a forum's jurisdiction in this manner, the ' "purposeful availment" requirement ensures that a defendant will not be brought into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts. (*Id.* at p. 475.) Instead, the defendant will only be subject to personal jurisdiction if ' "it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state."' (*Pavlovich v. Superior Court*, surpa 29 Cal.4th at p. 269, quoting *World–Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297.)

In our view, by engaging in business with Broadway, Bachmann purposefully availed himself of California's jurisdiction. According to the evidence presented by Broadway, Bachmann through his agents, Roberson and Estareja contacted Broadway inquiring about obtaining a loan on behalf of BSH *and* Bachman to develop a real estate

project. In addition, acting on Bachmann's behalf, Roberson and Estareja planned to deposit several million dollars into an account at Broadway to serve as collateral for the loan. Bachman (by his own account) on behalf of BSH attended two meetings with Broadway relating to the Share Loan. By taking out the Share Loan from Broadway in California, Bachmann created an ongoing obligation with residents of the state. Also by initiating contact with Broadway on Bachmann's behalf, Bachmann's agents, Estareja and Roberson acted on behalf of Bachmann in California. Bachmann was acting through them, directing the negotiations and reaping the benefits of a Share Loan agreement with Broadway. Through this course of activity, Bachmann purposefully availed himself of the benefits of conducting business in California. As a result, he is subject to California jurisdiction.

Bachmann, however, argues that he did not direct his activities at forum residents or purposefully avail himself of forum benefits as an *individual*; he claims that all of his actions were in his capacity as a representative of BSH. Bachmann's contention not only conflicts with the evidence presented by Broadway, it does not assist him. A corporation or other business entity acts through authorized individuals, and the activities of its employees are attributed to the business entity for purposes of personal jurisdiction. (*International Shoe Co. v. State of Washington* (1945) 326 U.S. 310, 316–317, 320.) Nonetheless, an individual's status as an employee acting on behalf of his or her employer *does not* insulate the individual from personal jurisdiction based on his or her forum contacts. (*Taylor–Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 115–118, [rejecting the "fiduciary shield" doctrine].) Apart from an employment relationship, activities that are undertaken on behalf of a defendant may be attributed to that defendant for purposes of personal jurisdiction if the defendant purposefully directed those activities toward the forum state. (*Burger King, supra,* 471 U.S. at p. 479, fn. 22; *Empire Steel Corp. v. Superior Court* (1961) 56 Cal.2d 823, 835; see *Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 713–716, ["an employee would be subject to individual jurisdiction if employee's actions had had a sufficient nexus to the cause of action alleged."]

There is sufficient evidence in the record to support the trial court's conclusion. Bachmann purposefully availed himself of the benefits of this forum not only on behalf of BSH, but also by the use of his agents who claimed to represent him individually. (See *Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969,983-984 [finding that defendants purposefully directed activities at California residents by and through individuals who visited California on their behalf and concluding that the proper jurisdictional question is not whether the defendant can be liable for the acts of another person or entity under state substantive law, but whether the defendant has purposefully directed its activities at the forum state by causing a separate person or entity to engage in forum contacts].)

2. The Controversy arises out of Bachmann's contacts with the forum.

"A controversy is related to or arises out of the defendant's forum contacts, so as to satisfy the second requirement for the exercise of specific personal jurisdiction, if there is 'a *substantial connection* between the forum contacts and the plaintiff's claim.'" (*Vons Companies, Inc., supra*, 14 Cal.4th at p. 452.) The forum contacts need not be the proximate cause or "but for" cause of the alleged injuries. (*Id.* at pp. 462–467.) The forum contacts also need not be "substantively relevant" to the cause of action, meaning those contacts need not establish or support an element of the cause of action. (*Id.* at pp. 469–475.) "A claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate." (*Id.* at p. 452.) Broadway's cross-complaint allegations against Bachmann arise out of Bachmann's contacts, through his agents, with California. Indeed, Broadway's action against Bachmann stem from Bachmann's interactions with Broadway regarding the deposit, Share Loan and the possibility of subsequent loans. Accordingly, there is sufficient evidence in the record that the controversy arises from Bachmann's contacts with California.

3. Exercise of jurisdiction is reasonable and fair.

Once Broadway met its burden with respect to the first two requirements of the specific personal jurisdiction inquiry, the burden shifted to the Bachman to show that the exercise of jurisdiction would be unreasonable.

In determining whether the exercise of jurisdiction would be fair and reasonable, so as to satisfy the third requirement for the exercise of specific personal jurisdiction, a court must consider (1) the burden on the defendant of defending an action in the forum, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining relief, (4) "'the interstate [or international] judicial system's interest in obtaining the most efficient resolution of controversies,'" and (5) the states' or nations' shared interest "'in furthering fundamental substantive social policies.'" (*Asahi Metal Industry Co., Ltd. V. Superior Court of California* (1987) 480 U.S. 102,113.) "These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. [Citations.] On the other hand, where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a *compelling case* that the presence of some other considerations would render jurisdiction unreasonable." (*Burger King, supra,* 471 U.S. at p. 477; emphasis added.)

Bachmann only possible argument suggested in the record is that it would be unreasonable to require him to litigate in a distant forum in view of his claim that he resides in Switzerland. This assertion, standing alone, however, does not qualify as a *compelling* reason to deny the exercise of jurisdiction by a California court. Bachmann has not shown that he would suffer any unique hardship by defending himself in California. Likewise, he has not suggested that any other forum would have an interest in this action, or that the claim presents a choice of law problem. In contrast, Broadway has alleged that Bachmann engaged in fraud in California in connection with the Share Loan. Thus, it appears much of the evidence and testimony revolves around actions taken in this state. Indeed, California has a strong interest in providing a forum to its residents for tort actions that occur here. (*Magnecomp Corp. v. Athene Co.* (1989) 209 Cal.App.3d 526,

535–536 [The commission of a tortious act within the forum state ordinarily justifies the exercise of specific personal jurisdiction in an action arising from the tortious act].) In short, Bachmann did not satisfy his burden to show that it would be unreasonable to require him to defend this action in California.

Accordingly, we conclude the trial court's exercise of personal jurisdiction over Bachmann was proper and the court did not err in denying the motion to quash on the basis that the court lacked personal jurisdiction over Bachmann.

C. Service of Process

To effectuate service pursuant to Code of Civil Procedure section 413.10, a summons must be served on a person: (a) within this state; (b) outside this state but within the United States, as provided by California law or by the law of the place where the person is served; or (c) outside the United States, as provided by the law or directed by the court in which the action is pending. (Code Civ. Proc., § 413.10.) When personal service cannot, with reasonable diligence, be effectuated on the person to be served, substitute service may be effectuated by (1) leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address; (2) in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address, at least 18 years of age, who shall be informed of the contents thereof; and (3) by subsequently mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing. (Code Civ. Proc., § 415.20, subd. (b).)

Broadway presented evidence that Bachmann represented orally and in writing that Residence in Encino was his home address. In the account agreement and account application (both containing Bachmann's signature) the address for the Encino Residence is listed as the Bachman's "home address." Bachmann also provided home telephone number with a San Fernando Valley area code, and represented to Broadway representatives that he was a Canadian citizen who resided in Encino. Broadway made

six attempts to personally serve Bachmann at the Residence in Encino, and following that, left a copy of the summons and complaint with a competent, over 18-year-old member of the household and mailed another copy of the summons and complaint via first class mail to the same address. Thus, Broadway made a reasonably diligent effort to personally serve Bachmann, and following that, effectively served Bachmann via substitute service at the Residence. These efforts satisfied Broadways' burden to effect service under section 415.20(b).

Bachmann attempted to refute Broadway's showing of service in his motion to quash, claiming in his declaration that although he stayed at the Residence in Encino for a "short time in 2008" he *never* represented that Residence was his permanent address. Furthermore, Bachmann asserted that service at Residence defective because the Residence belonged to his estranged wife and that he had not been to the Residence for over a year.

The trial court expressly addressed the conflict in the evidence on the issue at the hearing, finding that Bachmann's statements about service and statements about his connection to the Residence to be "self-serving." The court specifically resolved the factual conflict in favor of Broadway, noting that "when he signed the loan documents [he] indicated that [the Residence] was the address where he resided." Even if the home was owned by Bachmann's wife, and even if Bachmann and his wife are separate, those circumstances do not necessarily render service improper at that address. Indeed, section 415.20, (b) permits service at a "usual mailing address," which is a place that may be the defendant's home, abode or business. (See *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1202 [service proper at a private post office box rental store which was the address listed on the defendant's letterhead].) In light of the evidence Broadway presented including Bachman's admission and in view of the substantial evidence standard of review, we defer to trial court's resolution that substitute service at the Residence in Encino was proper under section 415.20.

In sum, we conclude the lower court properly denied the motion to quash. In addition, in light of our conclusion, on remand, Bachmann is barred from renewing his motion to quash on any of the grounds he previously asserted.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court for further proceedings according to the views expressed in this opinion. On remand, the superior court is directed to vacate its order denying appellant's motion to set aside the default and enter a new and different order granting the motion. Appellant is entitled to his costs on appeal.

WOODS, J.

We concur:

PERLUSS, P. J. **SEGAL, J.**[*]

[*]Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.